



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
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November 9, 2004

Ref: 8ENF-W

CERTIFIED MAIL 7003 2260 0001 7779 1398
RETURN RECEIPT REQUESTED
AND VIA FACSIMILE

Burton Hutchinson, Sr., Chairman
Northern Arapaho Business Council
P.O. Box 396
Ft. Washakie, WY 82514

RE: Emergency Administrative
Order under section 1431 of the SDWA
Docket No. SDWA-08-2005-0001
Arapaho Community, PWS ID #085690004

Dear Chairman Hutchinson:

Enclosed is an Emergency Administrative Order ("Order") issued under section 1431 of the Safe Drinking Water Act (SDWA), 40 U.S.C. § 300i. In its current state, the water supplied by the Arapaho Community Water System ("System") may present an imminent and substantial endangerment to the health of persons. The Order is based on two fecal coliform positive routine bacteriological samples collected on November 2, 2004, and one fecal coliform positive repeat bacteriological sample collected on November 4, 2004. Therefore, monitoring results submitted by the public water system during November 2004 exceeded the acute maximum contamination level (MCL) for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b). These monitoring results reveal that there is a high potential that fecal contamination or other disease causing organisms has entered the distribution system.

The enclosed Order sets forth the actions that Northern Arapaho Utilities ("NAU") must immediately take to ensure that the people served by the water supply are provided with safe drinking water. Penalties for failing to comply are set forth in the Order. The Order requires that the NAU conduct the following activities: (1) Provide an intent to comply with the Order; (2) institute continuous chlorination by upgrading, repairing and/or replacing disinfection equipment; (3) within 30 days, submit a detailed plan to EPA for bringing the System into compliance with the MCL for total coliforms; (4)



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implement the plan after obtaining EPA approval; (5) conduct increased monitoring for total coliform bacteria; and (6) provide public notice within 24 hours.

EPA is committed to working with you to ensure the safety of Arapaho Community's public water supply. If your staff has questions specific to the elements of the Order, the most knowledgeable people regarding these issues are Melanie Wasco, Environmental Protection Specialist, who can be reached at (800) 227-8917 x 6540, or Michelle Marcu, Enforcement Attorney, who can be reached at (800) 227-8917 X 6921.

We urge your prompt attention to this matter.

Sincerely,

Aundrey C. Wilkins for/
Carol Rushin
Assistant Regional Administrator
Office of Enforcement, Compliance
and Environmental Justice

Enclosure

cc:

Gerald Redman, Manager
Northern Arapaho Utilities

Don Aragon, Director
Wind River Environmental Quality Commission

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

IN THE MATTER OF)
)
Northern Arapaho Utilities)
Arapaho Community Water System, Operator)
27 North Fork Road)
P.O. Box 8583)
Ethete, Wyoming 82520)
PWS ID# 085690004)
) Docket No. SDWA-08-2005-0001
Respondent)
)
Proceedings under Section 1431)
of the Safe Drinking Water Act,)
42 U.S.C. § 300i) EMERGENCY
) ADMINISTRATIVE ORDER

I. STATUTORY AUTHORITY

The following Findings are made and Order issued under the authority vested in the Administrator of the U.S. Environmental Protection Agency (EPA) by section 1431 of the Safe Drinking Water Act (the Act), 42 U.S.C. § 300i, as properly delegated to the Supervisors of the Technical and Legal Enforcement Programs of the Office of Enforcement, Compliance and Environmental Justice, EPA Region 8.

II. JURISDICTION

- A. EPA has jurisdiction to issue emergency orders pursuant to the emergency powers provision of the Act, section 1431 of the Act, 42 U.S.C. § 300i.
- B. EPA has primary enforcement responsibility for the Act in Indian country because the Northern Arapaho Tribe does not have primary enforcement authority for

public water systems.

III. FINDINGS

- A. The Northern Arapaho Utilities ("Respondent") is a tribal agency under the laws of the Northern Arapaho Business Council and is therefore a "person" within the meaning of 40 C.F.R. § 141.2 for purposes of federal enforcement.
- B. Respondent owns and/or operates a system, the Arapaho Community Water System (the "System"), located on the Wind River Indian Reservation, Fremont County, Wyoming, for the provision to the public of piped water for human consumption.
- C. The System has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents and is therefore a "public water system" within the meaning of section 1401(4) of the Act, 42 U.S.C. § 300f(4), and a "community water system" within the meaning of 40 C.F.R. § 141.2.
- D. Respondent owns and/or operates a public water system and is therefore a "supplier of water" within the meaning of section 1401(5) of the Act, 42 U.S.C. § 300f(5) and 40 C.F.R. § 141.2. Respondent is therefore subject to the requirements of part B of the Act, 42 U.S.C. § 300g, and its implementing regulations, 40 C.F.R. part 141.
- E. According to a May 14, 2003, sanitary survey conducted by an agent of EPA, Respondent operates a System that is supplied by a groundwater source consisting

of two wells. The System serves an average of 1250 persons daily through 216 service connections.

- F. EPA determined that a contaminant which is present in the System may present an imminent and substantial endangerment to the health of persons based on two (2) fecal coliform-positive water samples taken by Respondent at the System on November 2, 2004 and one fecal coliform-positive water sample taken by Respondent at the System on November 4, 2004.
- G. The manager of the System issued a voluntary boil advisory on or about November 4, 2004.
- H. Prior to issuing this Order, EPA consulted with the System manager and laboratory representatives to confirm the information on which this Order is based and to ascertain the actions which Tribal authorities are taking.
- I. Notwithstanding the initial efforts taken by the System manager, this Order and the requirements set forth herein are necessary to ensure adequate protection of public health based on EPA's primary enforcement responsibility for the Act in Indian country.
- J. By issuing this Order, EPA supports and seeks to continue the initial efforts to protect public health by Tribal officials.

IV. FINDINGS OF VIOLATION

- A. **Total Coliform Acute Maximum Contamination Level ("MCL") Violation**

1. 40 C.F.R. § 141.63(b) imposes and defines the acute MCL for total coliform bacteria as a fecal coliform positive or *E. coli* positive repeat sample, or any total coliform positive repeat sample following a fecal coliform positive or *E. coli* positive routine sample.
2. Monitoring results submitted by Respondent for the System during November 2004 exceeded the acute MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(b).

V. BACKGROUND OF TOTAL COLIFORM RELATED PROBLEMS

This section is included in the Order to show the history of total coliform related problems at the System, including total coliform MCL violations, failure to monitor for total coliforms and failure to take additional total coliform samples after a total coliform positive sample. Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present.

A. Total Coliform MCL Violations

1. 40 C.F.R. § 141.21 requires public water systems to monitor the water at least twice per month to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. 40 C.F.R. § 141.63(a)(2) imposes and defines the MCL for total coliform bacteria, applicable to public water systems collecting fewer than 40 samples per month, as no more than one sample collected during the

month may be positive for total coliform bacteria.

3. Monitoring results submitted by Respondent for the System during September 2000, October 2003, and November 2003 exceeded the MCL for total coliform bacteria, in violation of 40 C.F.R. § 141.63(a)(2).

B. Total Coliform Monthly Monitoring Violations

1. 40 C.F.R. § 141.21(a) requires public water systems to monitor their water twice monthly to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63.
2. Respondent failed to monitor the water for contamination by total coliform bacteria during July 2001 and August 2004 in violation of 40 C.F.R. § 141.21(a).

C. Total Coliform Additional Routine Monitoring Violations

1. 40 C.F.R. § 141.21(b)(5) requires public water systems that collect fewer than five routine samples per month and have one or more total coliform positive samples to collect at least five routine samples during the next month that the System provides water to the public.
2. Respondent failed to collect at least five routine samples in October 2000, after a total coliform positive sample in the preceding month, in violation of 40 C.F.R. § 141.21(b)(5).

D. Total Coliform MCL Reporting Violations

1. 40 C.F.R. § 141.21(g)(1) requires public water systems that have exceeded the MCL for total coliforms in 40 C.F.R. § 141.63 to report the violation to EPA no later than the end of the next business day after it learns of the violation.
2. Respondent failed to report to EPA the total coliform MCL violations detailed in section A above, in violation of 40 C.F.R. § 141.21(g)(1).

E. Total Coliform Monitoring Reporting Violations

1. 40 C.F.R. § 141.21(g)(2) requires public water systems that have failed to comply with a coliform monitoring requirement under 40 C.F.R. § 141.21 to report the violation to EPA within ten days after the System discovers the violation.
2. Respondent failed to report to EPA instances of noncompliance detailed in sections B through C above, in violation of 40 C.F.R. § 141.21(g)(2).

VI. EMERGENCY ADMINISTRATIVE ORDER

Based on the foregoing Findings, and pursuant to section 1431 of the Act, IT IS

ORDERED:

H. INTENT TO COMPLY

1. Within 24 hours of receipt of this Order, Respondent shall notify EPA in

writing of its intention to comply with the terms of this Order.

B. COMPLIANCE MEASURES

1. Upon receipt of this Order, Respondent shall institute continuous chlorination of all well water to continually maintain a detectable disinfection chlorine residual throughout the distribution system.
2. Immediately upon receipt of this Order, Respondent shall monitor chlorine residual and have equipment be fully operational, with capacity to adequately treat the volume of water from each source and monitor a chlorine residual throughout the distribution system.
3. Respondent shall monitor and record chlorine residual daily at least at the same time and locations as bacteriological monitoring, which shall be at places the most distant in the distribution system, and where previous bacteriological samples have been fecal positive, and submit its results monthly to EPA.
4. Respondent must certify in writing to EPA that all disinfection equipment is operational and adequate to treat full capacity of each source within 30 days of this Order.
5. Within 30 days of this Order, Respondent shall submit a detailed plan to EPA for bringing Respondent's public water system into compliance with the bacteriological MCL at 40 C.F.R. § 141.63. Respondent shall address

the following information in the plan:

- a. Respondent shall investigate and report the known or suspected cause of contamination in the drinking water system;
 - b. Describe efforts the Respondent will take to prevent recurrence of MCL violation and how Respondent will respond to a MCL violation in the future;
 - c. Proposed system modifications;
 - d. Estimated costs of modifications; and
 - e. If construction is necessary, a schedule for construction of the project. The schedule shall include specific milestone dates and a final compliance date. The plans must be approved by EPA before construction can commence.
6. The schedule for construction and completion of modifications will be incorporated into this Order upon written approval by EPA.
 7. Within 30 days after EPA approves Respondent's plan, Respondent shall submit to EPA quarterly reports on the progress made toward bringing Respondent's System into compliance with the bacteriological MCL at 40 C.F.R. § 141.63.
 8. Respondent shall complete improvements to its system no later than six (6) months after EPA approves the plan referenced above.

C. MONITORING REQUIREMENTS

1. Respondent shall take two daily bacteriological samples to determine compliance with the MCL for total coliform bacteria as stated in 40 C.F.R. § 141.63, until EPA notifies Respondent to discontinue daily sampling. Respondent shall report daily total coliform sampling results, via telephone or telefax, to EPA immediately upon receiving the results.
2. After Respondent collects three consecutive daily total coliform samples that are negative and receives notification from EPA to discontinue daily total coliform sampling, Respondent shall conduct weekly bacteriological sampling to determine compliance with the MCLs for total coliform bacteria as stated in 40 C.F.R. § 141.63. Respondent shall report weekly total coliform sampling results to EPA, via telephone or telefax, immediately upon receiving the laboratory results.
3. Following three consecutive total coliform negative weekly bacteriological results, EPA will notify Respondent that weekly bacteriological sampling is no longer required.
4. Thereafter, Respondent shall comply with all bacteriological monitoring requirements for community water systems found at 40 C.F.R. § 141.21 to

determine compliance with the MCLs as stated in 40 C.F.R. § 141.63.

5. Upon the effective date of this Order, Respondent shall comply with all repeat sampling requirements specified in 40 C.F.R. §§ 141.21(b)(1)-(5). This requires that Respondent take no fewer than 4 repeat samples within 24 hours of being notified of a total coliform positive routine sample. Each repeat sample shall be analyzed for total coliform bacteria. If Respondent's water system has one or more total coliform positive samples in a month, Respondent shall collect at least 5 routine samples during the next month the System provides water to the public.
6. Respondent shall report all bacteriological analytical results to EPA within 10 days of the end of each monitoring period, as required by 40 C.F.R. § 141.31(a), or sooner if specified below.

D. PUBLIC NOTICE

1. No later than 24 hours of receipt of this Order, Respondent shall provide public notice of the violations specified in this Order in the affected area. This public notice shall be given in one or more of the following forms of delivery: (1) Appropriate broadcast media (such as radio and television); (2) Posting of the notice in conspicuous locations throughout the area served by the System; (3) Hand delivery of the notice to persons served by the System; or (4) Another delivery method approved in writing by EPA.

The notice shall be repeated at least once every 3 months by mail, hand delivery or posting as long as the violation exists. Respondent shall comply with any additional public notification requirements that may be established by EPA. Upon the effective date of this Order, Respondent shall comply with the public notification requirements at 40 C.F.R. § 141.201 et seq. following any future National Primary Drinking Water Regulation (NPDWR) violation. Respondent shall submit a copy of the public notice to EPA within 24 hours of completion of the public notice. The public notice shall include the following information:

- a. All requirements as specified in 40 C.F.R. § 141.205 including:
 - i. A description of the violation, including contaminant of concern, and the contaminant level;
 - ii. When the violation or situation occurred;
 - iii. Any potential adverse health effects from the violation or situation;
 - iv. The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;
 - v. Whether alternative water supplies should be used;
 - vi. What actions consumers should take, including when they

- should seek medical help, if known;
- v. What the System is doing to correct the violation or situation;
- vi. When the System expects to return to compliance or resolve the situation;

- vii. The name, business address, and phone number of the
System owner, operator, or designee of the public water
system as a source of additional information concerning the
notice; and
- viii. A statement to encourage the notice recipients to distribute the
public notice to other persons served.
- b. Respondent shall include the following mandatory health effects
language in the public notice as specified in 40 C.F.R. §
141.205(d)(1), appendix B to subpart Q of part 141:

Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.

Fecal coliforms and E. Coli are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.

UNTIL FURTHER NOTIFIED, ALL WATER USED FOR
DRINKING, BRUSHING TEETH, COOKING, MAKING ICE,
WASHING DISHES, OR USED FOR HUMAN
CONSUMPTION, ETC., SHALL BE BOILED FOR AT LEAST
ONE MINUTE, AT A ROLLING BOIL, BEFORE USE. ALL

STORED WATER, DRINK OR ICE MADE RECENTLY FROM
THIS SUPPLY SHALL BE DISCARDED.

E. REPORTING REQUIREMENTS

1. Notify EPA within 24 hours any time sampling reveals no detectable chlorine residual.
2. Report chlorine residual results to EPA monthly.
3. Unless otherwise specified, all reports and notifications herein required shall be submitted to:

Melanie Wasco
US Environmental Protection Agency
Technical Enforcement Program (8ENF-W)
999 18th Street Suite 300
Denver, Colorado 80202-2466
Telephone (800)227-8917 X 6540 or (303) 312-6540
Facsimile Number: (303) 312-6409

VII. GENERAL PROVISIONS

- A. This Order does not constitute a waiver, suspension, or modification of the requirements of 40 C.F.R. § 141.1 et seq., or the Safe Drinking Water Act, which remain in full force and effect. Issuance of this Order is not an election by EPA to forgo any civil or criminal action otherwise authorized under the Act.

- B. Violation of any term of this Order instituted under section 1431(a) of the Act, 42 U.S.C. § 300i(a), may subject the Respondent to a civil penalty of not to exceed \$16,500 for each day in which such violation occurs or failure to comply continues, assessed by an appropriate U.S. District Court under section 1431(b) of the Act, 42 U.S.C. § 300i(b).
- C. Violation of any requirement of the SDWA or its implementing regulations instituted under section 1414(b), 42 U.S.C. § 300g-3(b), may subject Respondent to a civil penalty of not more than \$32,500 per day of violation assessed by an appropriate U.S. District Court under section 1414(b) of the Act, 42 U.S.C. § 300g-3(b).
- D. The effective date of this Order shall be the date of issuance.
- Issued this 9th day of November, 2004.

SIGNED

Diane L. Sipe, Director
Technical Enforcement Program
Office of Enforcement, Compliance
and Environmental Justice

David J. Janik

Michael T. Risner, Director
David J. Janik, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance

Northern Arapaho Utilities
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**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE
ON NOVEMBER 9, 2004.**